IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6405 OF 1992

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K. P. UPADHYAY

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

1. Special Civil Application No. 6405 of 1992

MR DIVAKARAN with MR AK CLERK for Petitioner

MS RESHAM MEHTA with

MR HARDIK C RAWAL for Respondent Nos. 1-2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/02/2004

ORAL JUDGEMENT

1. The petitioner joined the services of the Gujarat State Road Transport Corporation (hereinafter referred to as "GSRTC" for short) as a Traffic Controller in the year 1972, on which he continued to serve till he came to be promoted on temporary basis by order dated 6th October,

1986 to the post of Assistant Traffic Inspector. After the said promotion, the petitioner continued to hold the post untill he was reverted to the post of Traffic Controller by an order dated 5th September, 1992. It is this order which made the petitioner to approach this Court by filing this petition.

2. The case of the petitioner is that the order impugned is issued without following the due procedure of law and without affording any opportunity of hearing. It is also contended by the petitioner that the order is issued for no justifiable reasons and discarding the fact that the petitioner was working on the post of Assistant Traffic Inspector for about six years i.e. from 1986 to 1992; that the order is unjust, arbitrary, unreasonable and discriminatory and violative of Articles 14 and 16 of the Constitution of India, and, therefore, deserves to be quashed and set aside.

The petitioner also contended that as per Standing Order No.937 of 1990, the criteria for the promotion to the post of Assistant Traffic Inspector is `meritorious service', which he had fulfilled, having successfully worked for about six years on the post without there being any communication about his unsatisfactory working, coupled with the fact that the petitioner had passed the departmental examination as early as in the year 1975 and had thus acquired the requisite eligibility for being considered for promotion to the post of Assistant Traffic Inspector, the petitioner was not required to be reverted by the order under challenge. It is also the case of the petitioner that juniors to the petitioner in the cadre of Assistant Traffic Inspector have been made permanent with retrospective effect, who had passed departmental examination subsequent to that of the petitioner and, therefore, according to the petitioner, the criteria is not properly applied. It is contended that if the same was properly applied, the petitioner ought to have been confirmed on the post of Assistant Traffic Inspector. The petitioner is not communicated any adverse remarks during the entire period of six years for which he served as Assistant Traffic Inspector. It is also contended by the petitioner that the persons, whose names are mentioned at Serial No.4 to 22 in the impugned order, are junior to the petitioner as they had passed departmental examination subsequent to the petitioner passing the examination. It is also contended that the persons junior to the petitioner were promoted subsequent to the petitioner to the post of Assistant Traffic Inspector and they were less meritorious than the petitioner and had

less experience of working on the post of Assistant Traffic Inspector than the petitioner.

3. The petition was filed on 14th September, 1992 and on 15th September, 1992, this Court passed the following order:

> "Rule. Notice as to interim relief returnable on 29.9.92. Meantime, status quo as regards the post held by the petitioner as on today to be maintained. D.S. permitted."

The said order of `status quo' was last extended on 17th November, 1992 to continue till the next date of adjournment i.e. 23rd November, 1992. Thereafter, the order of `status quo' is not extended.

4. The petition is contested by the GSRTC by filing an affidavit-in-reply affirmed by one Mr.M.R.Rathod, Administrative Officer. The deponent has stated in paragraph-3 of the affidavit-in-reply that, `the petitioner had sought voluntary transfer from Palanpur Division to Nadiad Division and accordingly, he was transferred with effect from 16th October, 1985 to Nadiad Division and under the regulations, when a voluntary transfer was effected, the employee concerned was required to forgo his seniority and his seniority at the place of transfer was counted from the date of his joining the place of transfer.' Further, it is stated that, `the petitioner was promoted as Assistant Traffic Inspector on purely temporary, ad hoc basis by way of local arrangement with effect from 8th October, 1986.' This particular fact is not mentioned in the petition. The deponent has also placed on record the relevant extracts from the seniority list wherein against the name of the petitioner, in the remarks column, it is mentioned that "reported at Nadiad Division on 16th October, 1985 from Palanpur Division, losing the seniority."

5. An affidavit-in-rejoinder is filed on 16th October, 1992 of which paragraph-3 deals with the contents of paragraph-3 of the affidavit-in-reply, but then, do not answer the contents of the affidavit-in-reply. For the ready perusal, paragraph-3 of the affidavit-in-rejoinder is reproduced:

> "With reference to para 3 of the affidavit in reply, I say and submit that by virtue of G.S.O. No.937/90 the employee who has completed one year of service without any break before December, 1989 shall be liable to be posted on the

permanent post of A.T.I. and as I have already completed more than one year on 31.12.89 on the post of A.T.I. and therefore I am required to be posted permanently on the post of A.T.I., but instead of posting me permanently the respondent has reverted me which is illegal and against the basic principles of natural justices and on that count alone petition is required to be allowed."

6. Mr.Divakaran, learned Counsel appearing for the petitioner, pointed out the aspect of transfer from Palanpur Division to Nadiad Division, as referred to in paragraph-5 of the rejoinder affidavit, which otherwise deals with the averments made in paragraph-7 of the affidavit-in-reply, but then, the learned Counsel was permitted to read and rely upon the same, which does not help him to come out of the difficulty, lying in his way. Paragraph-5 reads as under:

"With reference to para 7 of the reply affidavit I humbly state and submit that the employees who have been transferred to the Nadiad Division, have not requested for voluntarily transferred but in fact the respondents authority had no any qualified candidate who had passed the departmental examination for the post of A.T.I. in waiting list and therefore for administrative reasons the appointment was given. And in the light of the facts stated herein above my service should be considered continuously and therefore I am senior to my juniors who have already been promoted and I am reverted and therefore also the action of the respondents requires to be quash and the petition requires to be allowed."

(emphasis supplied)

At this juncture, it will be appropriate to refer to an order passed by this Court (Coram:B.J.Shethna, J.) on 18th August, 2003, which reads as under:

"Shri Divakar for Shri A.K.Clerk placed on record the copy of Rejoinder. He, however, prays for time to file further Affidavit of Rejoinder dealing with the averments made in para-8 of the Reply Affidavit filed by the Corporation in this petition. Put up after 4 weeks."

No further affidavit is filed dealing with the averments made in paragraph-8 of the reply affidavit. In

paragraph-8 of the affidavit-in-reply, it is stated that, "the order of reversion has been made effective and the petitioner has discharged his duty on the reverted post from 5th September, 1992."

7. Mr.H.C.Rawal, learned Counsel appearing for GSRTC, submitted that before the order of `status quo' was passed by this Court on 18th September, 1992, the reversion order dated 5th September, 1992 was implemented and the petitioner had started discharging the duties on the post of Traffic Controller, substantive post of the petitioner to which he was reverted from the post of Assistant Traffic Inspector.

8. In the aforesaid facts of the case, the only question for consideration of this Court remains is, `as to whether in the facts of the case, the GSRTC could have passed the order dated 5th September, 1992 reverting the petitioner to the post of Traffic Controller from the post of Assistant Traffic Inspector.' The broad facts of the case are that the petitioner was transferred from Palanpur Division to Nadiad Division at his own request and that too, by agreeing to forgo his seniority, as is reflected in the relevant part of the seniority list produced along with the affidavit-in-reply (this fact is kept back by the petitioner, it is not mentioned in the petition at all), therefore, necessity arose to revert the petitioner, who was promoted to the post of Assistant Traffic Inspector on temporary and ad hoc basis. The GSRTC had to follow the seniority, resulting into the reversion of the petitioner to the post of the Traffic Controller.

At this juncture, Mr.Divakaran, learned Counsel appearing for the petitioner, placed reliance upon two decisions of the Honourable Apex Court, namely, (i) in the matter of Renu Mullick (Smt) vs. Union of India & Anr., reported in (1994) 1 S.C.C.373; and, (ii) in the matter of Union of India & Ors. vs. C.N.Ponnappan, reported in (1996) 1 S.C.C. 524. The law laid down by the decision in the case of Renu Mullick (supra) is to the effect that the service rendered by an employee prior to unilateral transfer at own request also counts for determining the eligibility condition though such transfer downgrades the seniority. The same proposition of law is reiterated in the case of Union of India & Ors. vs. C.N.Ponnappan (supra) where the Honourable the Apex Court was pleased to hold that the service rendered by an employee in a unit from where he was transferred to another unit on compassionate grounds and consequently, placed at the bottom of seniority, could validly be

counted as experience for the purpose of promotion in the new unit.

9. Mr.H.C.Rawal, learned Counsel appearing for the respondent, submitted that he cannot have any dispute with the proposition of law laid down by the Honourable Apex Court. He submitted that in fact, this very proposition of law is placed into service by the respondent-GSRTC. He submitted that the service rendered by the petitioner at Palanpur Division is not wiped off and for all purposes, including that of retirement benefits, it is taken into consideration and the petitioner is granted all benefits by taking into consideration the total length of service, but then, the order under challenge is passed on account of his number in the seniority list, which was assigned on account of he having opted for voluntary transfer to Nadiad Division, FORGOING HIS SENIORITY. He submitted that all these facts are clearly pleaded in paragraph-3 of the affidavit-in-reply, a copy of which was served to the learned Counsel for the petitioner on 9th October, 1992 along with the relevant part of the seniority list, which the petitioner is not able to dislodge and that is why, this aspect is not dealt with by him in the affidavit-in-rejoinder.

10. In view of the aforesaid discussion and in view of the settled legal position and the facts of the case on hand, no relief can be granted to the petitioner and the petition is required to be dismissed. The petition is accordingly dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)
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